

II. REMARKS/ARGUMENTS

A. Generally

The Examiner has indicated that claims 1 - 24 are pending in the application; that claims 24 are rejected under 35 U.S.C. 103(a) as unpatentable over Dopfner et al. U.S. Patent No. 6,379,594. Applicant respectfully disagrees, and submits the following argument in support of the allowability of all pending claims.

B. Response to Rejections Based on 35 U.S.C. § 103(a)

The Examiner has indicated that claims 1 - 24 are pending in the application; that claims 24 are rejected under 35 U.S.C. 103(a) as unpatentable over Dopfner et al. Section 103(a) provides that “A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.” 35 U.S.C. §103(a).

A long line of cases stand for the proposition that when the patented invention is made by combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination. *Heidelberger Druckmaschinen v. Hantscho Commercial Prods., Inc.*, 21 F.3d 1068, 30 U.S.P.Q.2d 1377, 1379 (C.A.F.C.1994); *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931,934,15 U.S.P.Q.2d1321, 1323 (C.A.F.C.), cert. denied, 498 U.S. 920 (1990); *In re Geiger*, 815 F.2d 686, 688, 2 U.S.P.Q.2d 1276,127 (C.A.F.C.1987). The mere fact that the prior art *may* be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780, 1783-84 (C.A.F.C. 1992); *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (C.A.F.C. 1984).

The question is not whether what is claimed *could* have been done, but rather whether it was *obvious* to do so in light of all the relevant factors. *Arkie Lures Inc. v. Gene Larew Tackle Inc.*, 119 F.3d 953,957, 43 U.S.P.Q.2d 1294, 1297 (C.A.F.C.1997).

In order for the knowledge of persons of ordinary skill in the art to be sufficient to impart the motivation to combine references, the rejection must explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination of references. *Id.* Lacking a motivation to combine references, a proper *prima facie* case of obviousness is not shown. *Id.* A lofty level of skill alone does not suffice to supply a motivation to combine separate prior art disclosures. *In re Rouffet*, 149 F.3d 1350, 1359, 47 U.S.P.Q2d 1453, 1459 (C.A.F.C. 1998).

A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made'" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) (Court reversed obviousness rejection involving technologically simple concept because there was no finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated the skilled artisan to make the claimed invention); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) (The level of skill in the art cannot be relied upon to provide the suggestion to combine references.). [See MPEP § 2143.01]

To support the conclusion that a claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte*

Clapp, 227 U.S.P.Q. 972, 973 (P.T.O. Bd. Pat. App. & Int. 1985).

In the instant case, it is respectfully submitted that there is no suggestion or teaching in the cited reference, alone or in combination with known prior art or knowledge of those skilled in the art, to include the claimed apparatus and method.

The only references to “speaker” (or equivalent apparatus) in the entire Dopfner et al. disclosure are found not in the description of the invention, but in the Description of the Related Art portion of that document:

“In the patents CH 254243, DE 4207233 A1, EP 402866 A2, U.S. Pat. No. 3,935,924 A, as well as GB 2066145 A, it is suggested using beaten cellulose or microcellulose pulp as bonding agent, filter, speaker membrane or as thickening and reinforcing agent for paper products.”(Dopfner et al. specification column 1, lines 23 - 27, emphasis added).

“The U.S. Pat. No. 3,935,924 A appears to deal only with carbon-fiber reinforced fine paper with somewhat increased bonding properties for speaker membrane production.” (Dopfner et al. specification column 2, lines 1 - 3, emphasis added).

Thus, the only reference to a “speaker” or equivalent is itself a reference to a prior U.S. patent which discusses carbon-fiber reinforced paper for speaker membranes.

Furthermore, the only references to “hemp” in the Dopfner et al. disclosure are found in the Field of the Invention and several Examples in the Description of the Preferred Embodiments portions of that document:

“The invention concerns a process for producing blanks or molded bodies with similar characteristics as wood from one or more cellulose-containing, fibrous raw material, e.g. pure cellulose, but also crude fibers or the complete plant or other constituents of hemp, flax, reed, cotton, straw, etc., as well as old cardboard and waste paper, through specific processing of said fibers to form a microfiber pulp which is then dried, if necessary after first draining and forming it, as well as the diverse use of said microfiber pulp as bonding or matrix material for taking up filler materials.” (Dopfner et al. specification column 1, lines 8 - 18, emphasis added). ;

“EXAMPLE 1

Hemp fiber is ground in a watery solution (8% dry substance) until the microfiber pulp has a pudding-like consistency. This microfiber pulp is pumped into permeable forms and drained to 25% dry substance. The body is then dried to 85% dry substance and subsequently provided with its shape in a respective stamping mold.” (Dopfner et al. specification column 4, lines 45 - 52, emphasis added).

“EXAMPLE 3

Following a shortening to make it usable for processing, hemp straw is ground in a watery solution (6% dry substance) until a pudding-like substance results. This substance is then dried to form rigid boards with 75-90% dry substance (possibly after prior drainage to 40-60% and/or during continued rolling). The board is then dried completely for a direct usage of the board, or glasses, disposable dishes & cutlery, bowls, cassettes, relief doors and the like are produced with the aid of stamping and punching tools.” (Dopfner et al. specification column 4, line 65 through column 5, line 7, emphasis added).

“EXAMPLE 5

Hemp straw or waste paper is ground in a watery solution (7% dry substance) until a microfiber pulp results. This pulp is formed into a thick board and--if necessary after prior drainage--is foamed by introducing gas. A thin layer of non-foamed microfiber pulp is subsequently applied to the top and bottom of the board and the molded piece, which is clamped between air-permeable grids to retain the stability of the form, or is held in shape in a drying tunnel through rolling, is then dried at 40-90.degree. C. The resulting multilayer board is light-weight, has good insulating properties, but at the same time is also firm and has hard surfaces.” (Dopfner et al. specification column 5, lines 17 - 29, emphasis added).

“EXAMPLE 6

“50% hemp fiber, 48% hemp cellulose & 2% earth pigment are ground in a watery solution (8% dry substance) until a pudding-like fiber pulp results. This pulp is then

reinforced with layers of hemp fiber (fiber length: 1.0 cm-30.0 cm; 10% total dry substance) and is applied to a ball-shaped paraffin form. Following the drying and hardening, the formed part is opened by drilling and the paraffin is subsequently melted and removed through heating. Hollow balls or similar molded parts with high strength can be produced in this way. (Dopfner et al. specification column 5, lines 31 - 42, emphasis added).

“EXAMPLE 7

Hemp straw or hemp shavings are shortened to be usable for processing. Subsequently, 1/3 of the plant material mass is subjected to high processing, 1/3 to moderate processing, 1/3 is simply slightly defibered and all shares are subsequently mixed together homogeneously. The first third forms the "adhesive matrix," the second third an "interlinking and drainage felt," and the third one serves as "blocking and filler material" as well as reinforcement. By increasing the highly processed shares, the material becomes more wood-like, firmer and denser, by reducing the degree of processing or the highly processed shares, the material becomes light-weight and heat as well as sound damping. All types of boards as well as blanks and molded parts, housings, packagings, etc. can be produced from this fiber pulp." (Dopfner et al. specification column 5, lines 43 - 59, emphasis added).

Thus, the disclosure of the use of hemp material in Dopfner et al. is only in relation to the microfiber processing which is the subject of the Dopfner et al. invention, and for decidedly non-audio (i.e., speaker) applications.

Accordingly, it is respectfully submitted that there is no disclosure, suggestion, or teaching in the cited reference to include applicant's claimed speaker cone, speaker cone assembly, method for manufacturing an audio speaker, or method for reconditioning an audio speaker.

VI. CONCLUSION

In view of these comments it is believed that each of the presently pending claims in this application is in condition for immediate allowance, and such allowance is therefore respectfully

requested. The Examiner is invited to call Applicant's undersigned attorney if, in the opinion of the Examiner, a telephone conference will in any way expedite prosecution of this application.

Respectfully Submitted,

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